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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

HUSSAIN SHAIKH,

Plaintiff and Appellant,

v.

CENTURY SURETY COMPANY,

Defendant and Respondent.

B206518

(Los Angeles County
Super. Ct. No. BC364567)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Ruth A. Kwan, Judge. Affirmed.

Snipper, Wainer & Markoff and Maurice Wainer for Plaintiff and
Appellant.

Murchison & Cumming, LLP, and Carolyn A. Matthews for Defendant and
Respondent.

Appellant Hussain Shaikh asserted claims against respondent Century Surety Company (Century) for breach of insurance contract, bad faith, and declaratory relief. The trial court granted summary judgment on Shaikh's claims. We affirm.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

There is no material dispute about the following facts: Shaikh owns a warehouse in Carson. In November 1995, Shaikh leased the warehouse to a business then known as "Excel Textile Industries, Inc.," which later changed its name to "Hanyoung Textile, Inc." and then "Spectra USA Print, Inc." (Spectra).¹ Spectra was engaged in dyeing and imprinting fabrics. Century issued a commercial liability policy (liability policy) and a commercial property policy to Spectra (property policy), both of which were effective from April 28, 2005 to April 28, 2006 (the policies). Shaikh was an additional insured under the liability policy.

Spectra obtained the funds for the policies' premiums through a lender, Classic Plan Premium Financing, Inc. (Classic).² On May 5, 2005, Discovery Insurance Services (Discovery), Spectra's insurance broker, executed a financing agreement and submitted the agreement to Classic. The agreement, which named Spectra as the loan applicant, stated that Classic, the lender, was entitled to cancel the policies if Spectra defaulted on its loan payments. Classic subsequently sent Century a notice requesting the cancellation of the policies effective July 16, 2005.

¹ For simplicity, we refer to the business as "Spectra."

² Neither Spectra nor Classic is a party to this litigation.

On October 26, 2005, Shaikh's counsel submitted a claim under the liability policy to Century for damage to the warehouse. On February 7, 2006, Century denied the claim. On February 10, 2006, Shaikh initiated an action against Century for breach of insurance contract, bad faith, and declaratory relief. Shaikh later dismissed the action to permit Century to investigate a claim under the property policy. After Century conducted Shaikh's examination under oath, it denied the claim.

Shaikh initiated the underlying action against Century on January 10, 2007. His complaint alleged that the warehouse was damaged "[o]n or about the summer of 2005" due to "[v]andalism [by] third parties other than [Spectra]" and "[a]cts of destruction by Spectra's employees." On June 25, 2007, Century filed its motion for summary judgment or adjudication, contending that Shaikh's claims failed because the alleged losses occurred when the policies were not in force and fell within the policies' exclusions. At the initial hearing on the motion, the trial court asked Century to provide additional evidence regarding the cancellation of the policies, and accorded Shaikh an opportunity to respond to the evidence. Following a second hearing, the trial court granted summary judgment. Judgment was entered against Shaikh on March 2, 2008.

DISCUSSION

Shaikh contends that summary judgment was improperly granted. We disagree.

A. Governing Principles

"A defendant is entitled to summary judgment if the record establishes as a matter of law that none of the plaintiff's asserted causes of action can prevail.

[Citation.]” (*Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1107.) “Review of a summary judgment motion by an appellate court involves application of the same three-step process required of the trial court. [Citation.]” (*Bostrom v. County of San Bernardino* (1995) 35 Cal.App.4th 1654, 1662.) The three steps are (1) identifying the issues framed by the complaint, (2) determining whether the moving party has made an adequate showing that negates the opponent’s claim, and (3) determining whether the opposing party has raised a triable issue of fact.³ (*Ibid.*)

Generally, “the party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) Furthermore, in moving for summary judgment, “all that the defendant need do is to show that the plaintiff cannot establish at least one element of the cause of action -- for example, that the plaintiff cannot prove element X.” (*Id.* at p. 853, fn. omitted.)

The key issues on appeal concern the application of Insurance Code section 673, which authorizes lenders to cancel insurance policies under specified conditions.⁴ Under subdivision (a), a lender “who has advanced to the insurer the

³ Although we apply the same test as the trial court, we limit our inquiry into Shaikh’s claims to the contentions addressed in his opening brief. (*Christoff v. Union Pacific Railroad Co.* (2005) 134 Cal.App.4th 118, 125-126 [even though review of summary judgment is de novo, review is limited to issues adequately raised in appellant’s brief].)

⁴ All further statutory citations are to the Insurance Code, unless otherwise indicated.

[insured's] premium for the policy" may "exercise the right to cancel" only "when the right to use that right of the insured has been transferred or assigned by the insured in writing executed by, or on behalf of, the insured to [the] lender."⁵ Here, there is no dispute that Classic constituted an "industrial loan company" within the meaning of section 673. Subdivision (d) of section 673 specifies notices that a such lender is obliged to provide in exercising the right to cancel a policy: it must give advance written notice of its intent to cancel to the insured's insurance agent or broker, and later provide written notice of the cancellation to the insured and the agent or broker.⁶

Regarding the duties of the insurer, subdivision (i) of section 673 provides: "A lender which sends a written exercise of cancellation right or a written notice of cancellation to an insurer . . . thereby represents that he or she has a valid right to do so and to receive the unearned premium. If the lender thereby accomplishes

⁵ Subdivision (a) of section 673 provides that "'exercise the right to cancel' means the act of formally electing to use the right of the insured to cancel any insurance policy in accordance with and subject to the provisions of that policy when the right to use that right of the insured has been transferred or assigned by the insured in writing executed by, or on behalf of, the insured to a lender who has advanced to the insurer the premium for the policy."

⁶ Subdivision (d) of section 673 provides: "An industrial loan company shall, in giving the insured 10 days' notice of its intent to cancel pursuant to Section 18608 of the Financial Code, furnish a copy of such notice to the insurance agent or insurance broker indicated on the premium finance agreement. After expiration of the 10-day period, the industrial loan company may thereafter, in the name of the insured, cancel the insurance contract or contracts by mailing to the insurer a written notice of cancellation, and the insurance contract shall be canceled as if the notice of cancellation had been submitted by the insured person, but without requiring the return of the insurance contract or contracts. The industrial loan company shall also mail a notice of cancellation, setting forth the effective date of cancellation of the finance insurance contract, to the insured at his or her last known address and to the insurance agent or insurance broker indicated on the premium finance agreement."

the cancellation and receives an unearned premium, such representation shall be conclusive as between the insurer and the lender. An insurer relying upon the written exercise of that right containing a confirmation of cancellation date . . . shall be relieved from complying with any other duty or form of cancellation required by this code.”

Also pertinent here are provisions in the policies pertaining to their cancellation. Each policy identifies Spectra as the sole “Named Insured” in the declarations. The liability policy also contains an endorsement entitled “Additional Insured - Managers or Lessors of Premises,” and the parties agree that Shaikh received a certificate of insurance identifying him as an additional insured under the liability policy. Regarding cancellation, each policy states: “The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advanced written notice of cancellation.” In addition, in a section entitled “Transfer of Your Rights and Duties Under This Policy,” each policy states: “Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.”

In addition, the policies contain exclusions relevant to Shaikh’s contentions. The liability policy excludes coverage for “‘Property Damage’ to . . . Property you own, rent, or occupy, including any costs or expenses incurred by you . . . for repair, replacement, enhancement, restoration or maintenance of such property for any reason” The property policy excludes coverage for loss caused by “[w]ear and tear.” Moreover, the property policy contains an exclusion for losses caused by “[d]ishonest or criminal acts by you, any of your . . . employees, . . . or anyone to whom you entrust the property for any purpose.” The exclusion states: “This exclusion does not apply to acts of destruction by your employees . . . ; but theft by employees . . . is not covered.”

B. Parties' Showings and Ruling

On summary judgment, respondents submitted evidence supporting the following version of the underlying events: The warehouse at issue is one of three warehouses Shaikh owns in the same location in Carson. Spectra initially leased all three warehouses in November 1995. In 2001, Spectra filed a bankruptcy petition. During the bankruptcy proceedings, Spectra surrendered two warehouses to Shaikh and moved some of its equipment into the third warehouse. Upon Spectra's departure, the two warehouses displayed \$200,000 in damage, including trenches in the concrete floors and removed or destroyed electrical systems. Shaikh repaired the damage without asserting an insurance claim.

When Spectra moved its equipment to the third warehouse, it made unauthorized improvements to the warehouse. As result, in the course of the bankruptcy proceedings, Shaikh filed a suit against Spectra for waste. In February 2002, Shaikh settled his claims and permitted Spectra to lease the third warehouse. In lieu of the deposit required under the lease, Spectra gave Shaikh a lien on its equipment and other articles of property in the warehouse.

By 2002, Spectra had made several changes to the warehouse, including digging trenches in the concrete floor, installing machinery, and placing vacuum ducts in the roofs. Shaikh was familiar with the warehouse's condition, as he frequently walked through it. In 2004, Shaikh filed an unlawful detainer and breach of contract action against Spectra. In settling the action in April 2004, Shaikh obtained an increased interest in Spectra's equipment and property.

Discovery obtained the policies for Spectra from Century and also arranged for financing for Spectra from Classic. According to a declaration from Paul Lim, Discovery's president, Spectra orally authorized Discovery to assign its cancellation rights to Classic. Discovery employee Stephen Chang, acting on

Spectra's behalf, executed the May 5, 2005 financing agreement that transferred the cancellation rights to Classic. Classic subsequently sent a form notice to Century cancelling the liability policy effective July 16, 2005 "due to loan nonpayment by the insured/borrower." In addition, Classic arranged for the cancellation of the property policy effective July 16, 2005, through an underwriter, which sent Century a notice requesting cancellation of the policy for "[n]onpayment of [p]remium-[f]inance [c]o."

Spectra moved out of the warehouse in October 2005. In so doing, Spectra and its employees took electrical wiring and equipment from the warehouse. At that time, Shaikh saw Spectra removing machinery and equipment from the warehouse.

On October 26, 2005, Maurice Wainer, Shaikh's counsel, submitted a claim on Shaikh's behalf under the liability policy to Century for damage to the warehouse "caused by Spectra's unauthorized removal of equipment, fixtures, and common premises." In investigating the claim, Century hired Bob Bickford, an independent adjuster, who inspected the warehouse and met with Shaikh's controller and manager, Mukesh Doshi. Doshi told Bickford that Spectra removed portions of the electrical panels together with copper tubing and wiring, and also damaged overhead water sprinkler lines.

On February 7, 2006, Century denied the claim based on the provisions of the liability policy, including an exclusion for property damage to the property the insured owned, rented, or occupied. On February 15, 2006, Wainer sent Century a letter stating that Shaikh did not know who "removed the equipment and fixtures" from the warehouse. In response to the letter, Century began investigating a claim under the property policy. To resolve the claim, Century engaged William Lee, an independent adjuster, who determined that there were no police reports of

vandalism, and that the warehouse's alarm system, which was fully operational through December 2005, never registered a break-in.

Shaikh submitted to Century an estimate that his losses amounted to \$359,743.18. According to Shaikh, this estimate represented the costs of restoring the warehouse to its condition at the inception of the lease in 1995, including repairing trenches and holes in the concrete floor, removing vacuum ducts, and replacing the electrical equipment. After Century conducted Shaikh's examination under oath, it denied the claim, asserting, inter alia, that the damage in question did not occur during the coverage period of the property policy, which was cancelled on July 16, 2005, and otherwise fell within the exclusions for "wear and tear" and criminal acts by the insured.

In opposing summary judgment, Shaikh raised numerous objections to Century's showing, but challenged few of the facts asserted in Century's separate statement with an offer of evidence. To the extent Shaikh tendered evidence in an attempt to raise material factual disputes, he relied primarily on his own declaration. According to the declaration, Shaikh was an additional insured "on [the] policies." Shaikh had seen no document or evidence (1) that Spectra assigned its right to cancel the policies to Classic, (2) that Century agreed in writing that Spectra was permitted to transfer the right to Classic, and (3) that the policies were cancelled in accordance with the policy provisions. In addition, Shaikh received no notices of cancellation from Classic or Century.

Regarding the damage to the warehouse, Shaikh stated: "I never entrusted my property or building to the employees of Spectra and it is my claim that Spectra's employees committed acts of destruction against my property. The building's electrical system was cannibalized by Spectra's employees who, I am informed and believe, were not paid by Spectra and by the employees who

removed equipment in a destructive manner. The only other possible explanation for the damage is vandalism by third parties.” Shaikh also stated that he had not authorized Wainer to make binding admissions regarding the insurance claims.

In addition, Shaikh submitted declarations from Doshi and Wainer. Doshi denied telling Bickford that Spectra had removed electrical equipment and wiring and damaged water sprinkler lines. Wainer stated he had not been authorized to make binding admissions regarding Shaikh’s claims.

The trial court granted summary judgment, reasoning that there were no triable issues that the policies were cancelled effective July 16, 2005, and that the claimed damages occurred outside the coverage period or fell within the “criminal or dishonest acts” exclusion.⁷

⁷ In granting summary judgment, the trial court overruled Shaikh’s evidentiary objections, aside from one objection immaterial to our analysis. To the extent Shaikh does not challenge these rulings, he has forfeited his objections. Although Shaikh reasserts some of the objections on appeal, in most instances he offers no supporting argument. As a party must support contentions with argument and may not incorporate by reference the arguments in his trial court pleadings, with the exception of the objections we discuss in the course of our analysis, Shaikh has forfeited his challenges to the evidentiary rulings. (*In re Groundwater Cases* (2007) 154 Cal.App.4th 659, 690, fn. 18; *Aguimatang v. California State Lottery* (1991) 234 Cal.App.3d 769, 798.)

On a related matter, we note that Shaikh relied exclusively on evidentiary objections to raise factual disputes regarding numerous items in Century’s separate statement of undisputed facts. Because the trial court overruled his objections, we view the items in question as undisputed for purposes of our analysis insofar as Shaikh has forfeited his objections. For similar reasons, we also regard as undisputed items Shaikh purported to challenge without citing any evidence.

C. Absence of Triable Issues

In our view, the trial court did not err. As explained below, Shaikh has failed to raise a triable issue regarding whether the policies were properly cancelled, and whether losses within the coverage of the policies occurred while the policies were in force.

1. Cancellation of the Policies

We begin with Shaikh's contentions regarding the cancellation of the policies. Generally, under section 673, "it is the lender who controls cancellation of the policy when (1) the insured defaults in meeting its obligations and (2) the insured has transferred to the lender the insured's right of cancellation." (*Holland v. Sterling Casualty Ins. Co.* (1994) 25 Cal.App.4th 1059, 1063.) Thus, "when a premium financing lender gives an insurer written notice that it is exercising the right to cancel a policy, the lender thereby represents to the insurer that it has the right to exercise said right of cancellation; and if the lender thereby obtains such a cancellation, the lender's representation is conclusive as between the lender and the insurer. By cancelling the policy, such an insurer . . . acts in accordance with section 673." (*Id.* at p. 1064.)

Here, there is no dispute that Classic, on Spectra's behalf, paid the policies' premiums. In seeking summary judgment, Century submitted evidence that Spectra orally authorized Discovery to transfer its cancellation rights to Classic, which exercised the rights through written notices to Century cancelling the policies due to Spectra's nonpayment of the loan. Shaikh argues (1) that Century's showing was inadequate regarding Discovery's authority to assign the cancellation rights, (2) that the assignment was invalid, and (3) that Classic was

not entitled to cancel the policies at the time the written notices were sent to Century.⁸

a. Discovery's Authority to Assign the Rights

Shaikh contends that Century failed to show that Spectra authorized Discovery to assign its cancellation rights to Classic. We disagree. As the court explained in *Pacific Auto Ins. Co. v. Wolff* (1977) 72 Cal.App.3d 537, 541-542, insureds may properly assign their cancellation rights to a lender under section 673 by orally authorizing their insurance agent or broker to execute a written assignment of the rights to the lender. According to the declaration from Paul Lim, Discovery's president, Spectra orally authorized Discovery to assign its cancellation rights to Classic.

Shaikh argues that Lim's declaration was insufficient to carry Century's burden on summary judgment because Century submitted no evidence *from Spectra* regarding the oral authorization. The absence of such evidence, he suggests, raises a material dispute regarding the authorization.⁹ This argument misapprehends Century's burden on summary judgment.

⁸ Regarding Century's showing on these matters, Shaikh argues that the declaration from Carol Meedon Broerman, Century's litigation counsel, was insufficient to authenticate the attached copies of Classic's cancellation notices and other relevant documents. The trial court overruled the objection. As Broerman stated that she was responsible for Century's handling of the case and familiar with Century's underwriting, claims, and litigation files, we see no error in the ruling. (See *Rosenblum v. Safeco Ins. Co.* (2005) 126 Cal.App.4th 847, 861-863 [declaration from claims analyst familiar with insurer's records adequate to authenticate documents from insurer's files].)

⁹ On a related matter, Shaikh contends that he was denied an opportunity to address the trial court's determination that Century had no obligation to show that Spectra assigned the cancellation rights to Classic. The order granting summary judgment states: "Although [Century] is not required to submit evidence that [Classic] has the right to use

As our Supreme Court explained in *Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at page 850, footnote 11, “on summary judgment, the moving party’s burden is more properly one of persuasion rather than proof, since he must persuade the court that there is no material fact for a reasonable trier of fact to find, and not prove any such fact to the satisfaction of the court itself as though it were sitting as the trier of fact.” (Italics omitted.) Here, Lim’s declaration provided ample basis for a reasonable factfinder to conclude that Spectra had, in fact, authorized Discovery to execute the financing agreement, thereby shifting the burden to Shaikh to raise a triable issue of fact. When such a shift occurs, mere speculation will not defeat summary judgment. (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 163.) To establish a triable issue of fact here, one must point to evidence that Spectra had *not* so authorized Discovery. (*Ibid.*) Shaikh has not provided any such evidence, as his declaration asserts only that he had not seen any evidence or documents regarding the authorization.

Shaikh argues that Lim’s declaration, which constituted Century’s sole evidence of Discovery’s authority to transfer Spectra’s rights, does not constitute substantial evidence on this question. We disagree. Lim stated that he acted on Spectra’s behalf in obtaining financing from Classic and the policies from Century; that he had personal knowledge of the facts stated in his declaration; and that “Discovery was orally authorized by Spectra to assign its cancellation rights under the policy to [Classic] pursuant to the provisions of [] Section 673.” Lim’s

the right of Spectra to cancel Spectra’s policies . . ., such evidence was submitted by [Century] at the request of the Court and with the opportunity for [Shaikh] to respond to the evidence.” Shaikh does not dispute that the trial court permitted him to address Century’s evidence. Because we conclude that Century, in fact, established that Spectra assigned its cancellation rights to Classic, we do not address Shaikh’s contention regarding the italicized portion of the order.

declaration thus constitutes adequate evidence regarding the scope of Discovery's authority. (*24 Hour Fitness, Inc. v. Superior Court* (1998) 66 Cal.App.4th 1199, 1211 ["[I]t is settled that, in the absence of countervailing evidence, declarations that a party acted within the scope of his employment are treated as statements of fact for purposes of summary judgment. [Citations.]"])

Shaikh also argues that Lim's declaration was insufficient to show the requisite authorization, pointing to *Howell v. Courtesy Chevrolet, Inc.* (1971) 16 Cal.App.3d 391 for the proposition that an agent cannot establish the scope of his authority through his own "declarations." In *Howell*, the appellate court remarked that "[t]he declarations of an agent" are not admissible to prove the existence or scope of the agency. (*Id.* at p. 401.) However, as Witkin explains, the rule in question, fully stated, applies only to an agent's nontestimonial statements: "The extrajudicial declarations of one assuming to act as an agent may not be introduced in evidence to prove the agency, unless made in the presence of, or communicated to and acquiesced in by, the principal." (3 Witkin, Summary of Cal. Law (10th ed. 2005) Agency and Employment, § 94, p. 141.) In contrast, "[t]he testimony of an agent as a witness is admissible to prove either authorization or ratification." (*Ibid.*; see, e.g., *Ripani v. Liberty Loan Corp.* (1979) 95 Cal.App.3d 603, 611 ["[T]he testimony of the agent is admissible to prove both the fact of the agency and the extent of the authority conferred."].)

Accordingly, Lim's declaration is competent evidence regarding the scope of Discovery's authority to assign Spectra's cancellation rights to Century.

b. *Validity of Spectra's Assignment*

Shaikh contends the assignment of Spectra's cancellation rights to Classic was invalid because it contravened the terms of the policies. The crux of his

contention is that Century's failure to discharge its policy obligations regarding the assignment rendered the assignment ineffective under section 673 and also denied him notice of the assignment.

Generally, section 673 obliges the *lender*, not the *insurer*, to provide the insured with notices regarding cancellation of the policy, and the lender's failure to give the requisite notices does not discharge the insurer's obligation to cancel the policy upon the lender's request. (*Pacific Business Connections, Inc. v. St. Paul Surplus Lines Ins. Co.* (2007) 150 Cal.App.4th 517, 523 [even if the lender's notices to insured were defective under section 673, insurer was required to honor the lender's cancellation request]; *Gorham Co., Inc. v. First Financial Ins. Co.* (2006) 139 Cal.App.4th 1532, 1542 [section 673 imposes no obligation upon insurer to give additional insured notice of lender's cancellation]; *Holland v. Sterling Casualty Ins. Co.*, *supra*, 25 Cal.App.4th at pp. 1063-1064 [as insurer must cancel policy upon lender's request under section 673, insured's only recourse for lender's failure to send pre-cancellation notice is against lender].)¹⁰

Shaikh contends that the policies obliged Century to consent in writing to Spectra's assignment of its cancellation rights to Classic. He argues that Century's failure to so consent amounted to a policy breach that denied him notice of the assignment to which he was entitled under the policies. In addition, pointing to subdivision (a) of section 673 -- which specifies that the right to cancel, as assigned to the lender, is "the right of the insured to cancel . . . in

¹⁰ To the extent Shaikh may suggest that he was entitled to notice of the cancellations from Century under section 673, his reliance on *Kotlar v. Harford Fire Ins. Co.* (2000) 83 Cal.App.4th 1116 and *Olivine Corp. v. United Capitol Ins. Co.* (2002) 147 Wash.2d 148 [52 P.3d 494] is misplaced, as these cases address other cancellation statutes. (*Kotlar v. Harford Fire Ins. Co.*, *supra*, 83 Cal.App.4th at pp. 1120-1124 [§ 677.2]; *Olivine Corp. v. United Capitol Ins. Co.*, *supra*, 52 P.3d at pp. 497-503 [Wash. Rev. Code. § 48.56.110].)

accordance with and subject to the provisions of [the] policy” (italics added) -- he argues that Century’s purported breach invalidated the assignment under section 673.

In our view, Shaikh has failed to show that Century breached the policies. The policies’ “consent to transfer” provision, which states that the insured’s rights and duties “*may not* be transferred without [Century’s] written consent” (italics added), operates for Century’s benefit, as it constrains the insured’s ability to assign its interests in the pertinent policy. Generally, the purpose of such provisions is “““to prevent an increase of risk and hazard of loss by a change of ownership without the knowledge of the insurer.””” (*Quemetco Inc. v. Pacific Automobile Ins. Co.* (1994) 24 Cal.App.4th 494, 503, quoting *University of Judaism v. Transamerica Ins. Co.* (1976) 61 Cal.App.3d 937, 941.) California courts have long held that parties to a contract, including insurers, may waive provisions inserted for their benefit. (*Wyer Summit Partnership v. Turner Broadcast.Sys., Inc.* (9th Cir. 1998) 135 F.3d 658, 662 [citing cases]; *Knarston v. Manhattan Life Ins. Co.* (1903) 140 Cal. 57, 63 [insurer waived provision inserted in contract for its benefit].) Accordingly, Century’s failure to consent in writing to Spectra’s assignment did not deny Shaikh any notice of the assignment to which he was entitled under the policies.

For similar reasons, Shaikh cannot assert that Century’s failure to consent invalidated the assignment under section 673. An insured lacks standing to raise contentions of error predicated upon provisions of section 673 that exist for the insurer’s benefit. (*Hoffman v. Citadel General Assurance, Ltd.* (1987) 194 Cal.App.3d 1356, 1362-1363.) Because the “consent to transfer” provision was inserted in the policies for Century’s benefit, the statutory requirement in section 673 upon which Shaikh relies -- namely, that the exercise of cancellation rights, as

assigned to the lender, must be “in accordance with and subject to the provisions of [the] policy” (§ 673, subd. (a)) -- also operated for Century’s benefit, insofar as the requirement concerned the “consent to transfer” provision. Accordingly, Shaikh’s challenge to the assignment fails.

c. Classic’s Assignment of the Rights to Another Lender

Shaikh contends there is a triable issue regarding the propriety of the cancellation of the policies, pointing to evidence that Classic assigned its cancellation rights to another lender before it asked Century to cancel the policies. In response to the trial court’s request for additional evidence regarding Spectra’s transfer of its cancellation rights to Classic, Century submitted declarations from Betty Kaylor, Classic’s office manager; Paul Lim, Discovery’s president; and Stephen Chang, a Discovery employee. Attached to the declarations are identical copies of Spectra’s May 5, 2005 financing agreement that transferred the cancellation rights to Classic. Each copy of the agreement discloses the following stamped notation: “This contract and all of the rights of [Classic] arising hereunder or related hereto have been assigned, transferred and conveyed to California National Bank, N.A.”

Shaikh argues that the notation raises a triable issue whether Century improperly cancelled the policies upon Classic’s request. We disagree. Subdivision (i) of section 673 provides that the lender, in sending the insurer a notice of cancellation, “thereby represents that [it] has a valid right to do so and to receive the unearned premium. If the lender thereby accomplishes the cancellation and receives an unearned premium, such *representation shall be conclusive* as between the insurer and the lender. An insurer relying upon the written exercise

of that right . . . *shall be relieved* from complying with any other duty or form of cancellation required by this code.” (Italics added.)

As explained above (see pt. C.1.a, *ante*), Spectra assigned its cancellation rights to Classic; moreover, Shaikh does not dispute that Classic submitted the requisite notices to Century and received from Century an “unearned premium” upon cancellation of the policies. Nothing before us suggests that Century knew, or should have known, that Classic might have assigned its cancellation rights to another lender. Under these circumstances, subdivision (i) of section 673, by its plain language, mandates the conclusion that Century was entitled to cancel the policies, regardless of whether Classic, in fact, had the right to request such cancellation.

2. *Losses Within the Coverage Period*

In granting summary judgment, the trial court concluded that Shaikh failed to raise a triable issue regarding whether he suffered losses within the coverage of the policies while they were in force. We agree with the trial court on this matter. As explained above, Century properly cancelled the policies effective July 16, 2005. In seeking summary judgment, Century presented considerable evidence -- drawn in large measure from Shaikh’s statements in prior legal proceedings and his examination under oath -- that Shaikh’s claimed damages occurred before the policies became effective on April 28, 2005, or in October 2005, after they were cancelled.

Century’s showing, in our view, shifted the burden on summary judgment to Shaikh to provide evidence that he suffered covered losses during the period the

policies were in force.¹¹ This he did not do. In opposition to summary judgment, Shaikh relied primarily on his declaration, which attributed the damage in the warehouse to destructive acts by Spectra’s employees or unknown vandals, but did not state when the damage occurred beyond repeating Shaikh’s claim, as alleged in his complaint, that the damage “occurred on or about the summer of 2005.”¹² Recitation of the complaint’s allegations cannot raise a triable issue. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 767, 775 [the party opposing summary judgment does not raise a triable issue through allegation, speculation, or surmise].) No other evidence cited in Shaikh’s separate statement or opposition to summary judgment rectified the deficiency in his declaration. Although Doshi’s declaration may have raised a triable issue regarding whether he told Century’s investigator that Spectra removed electrical equipment and wiring and damaged water sprinkler lines, Doshi provided no evidence regarding the dates of the damage. Wainer’s declaration also contained no evidence bearing on this question. Shaikh thus failed to provide evidence that *any* of his claimed losses occurred while the policies were in force.

¹¹ Shaikh contends in his briefs that Century improperly argued to the trial court that his prior statements and testimony, and the statements of his counsel, were conclusive or binding about the causes and dates of the damages. Nothing before us suggests that the trial court, in granting summary judgment, relied on a determination that the statements and testimony in question were conclusive or binding. Moreover, as explained above (see pt. C.1.a, *ante*), Century was not obliged to provide conclusive evidence regarding the dates of the damage; Century’s burden was solely to provide evidence sufficient to “persuade the court that there is no material fact for a reasonable trier of fact to find” (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 850, fn. 11, italics omitted). For the reasons explained above, Century met this burden.

¹² Shaikh’s declaration states: “I have read the Motion. My claim is that the damage occurred on or about the summer of 2005. The Complaint is only meant to give a general idea of the relevant dates.”

On appeal, Shaikh points to portions of his examination under oath that he suggests may raise triable issues regarding the dates of his claimed damages. As Shaikh brought none of this evidence to the trial court's attention, it is not a basis for reversing summary judgment. (*Sheeler v. Greystone Homes, Inc.* (2003) 113 Cal.App.4th 908, 920, fn. 7.) The trial court may properly disregard evidence not cited in the parties' separate statements when it "is not referenced, is hidden in voluminous papers, and is not called to the attention of the court at all." (*San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308, 316.) For similar reasons, we disregard novel factual contentions on appeal. (*Sheeler v. Greystone Homes, Inc., supra*, 113 Cal.App.4th at p. 920, fn. 7.) In sum, the trial court properly granted summary judgment.

DISPOSITION

The judgment is affirmed. Century is awarded its costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.